

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

THE ATLANTIC GROUP, INC.

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 220

Cases 16-CA-260413  
16-CA-262499  
16-CA-263091  
16-CA-263222

*Arturo A. Laurel, Esq.*, for the General Counsel  
*Michael Murphy, Esq.*, IBEW, Longview, Texas,  
for the Charging Party  
*John V. Jansonius and David Schlottman, Esqs.*  
(Jackson Walker), Dallas, Texas, for the Respondent

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. A hearing in this case was conducted remotely via Zoom video-technology on March 1 and 2, 2021. The International Brotherhood of Electrical Workers, Local Union 220 (the Union) alleges that: (1) supervisors of The Atlantic Group, Inc. (the Respondent), violated Section 158(a)(1) of the National Labor Relations Act (the Act)<sup>1</sup> on March 25, 2020<sup>2</sup> by threatening employees with job loss or plant closure if they selected the Union as their collective-bargaining representative; and (2) violated Section 158(a)(5) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees, and failing and refusing to furnish relevant and necessary information requested by the Union; and (3) laying off bargaining unit employees David Smith and Jose Mendez without prior notice to the Union and without affording the Union an opportunity to bargain over these actions and their effects.

On the entire record, including my observation of the demeanor of the witnesses,<sup>3</sup> and after considering the briefs filed by the General Counsel, Charging Party and Respondent, I make the following

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<sup>1</sup> 29 U.S.C. §§ 141-159.

<sup>2</sup> All dates are 2020 unless otherwise indicated.

<sup>3</sup> The General Counsel and the Respondent each called one witness, Michael Murphy, Esq., and Kevin Crabtree, respectively. Murphy provided the only testimony relating to the Union's communications with the Respondent, while Crabtree provided the only testimony relating to the Respondent's operations. Both were credible and the material facts are essentially undisputed.

## FINDINGS OF FACT

## I. JURISDICTION

5 The Respondent, a Virginia corporation, provides maintenance and modification services to nuclear and fossil power plants, including the Comanche Peak Nuclear Power Plant (Comanche Peak or the plant) in Glen Rose, Texas, where it annually purchases and receives goods in excess of \$50,000 directly from outside Texas. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

*A. The Respondent's Operations*

15 Comanche Peak, a generator of electricity, is owned and operated by the Luminant Generation Co. (Luminant). There are two nuclear reactors at Comanche Peak. Effective January 30, the Respondent took over the maintenance and modification contract (maintenance contract) from Fluor Daniel, the previous contractor. While the plant is on-line, i.e., generating electricity, the Respondent's "core" employees provide services ranging from mopping floors, cutting grass, building scaffolds, painting, and repairing air conditioning units. During plant outages (also referred to as off-line), the Respondent's employees assist Luminant with a separate set of tasks. During those periods, outage employees are employed at the site for an average of six weeks. Outage employees are also known as travelers because they travel from shutdown to shut down, working for different companies at different power plants.<sup>4</sup>

20 Luminant must request and authorize the Respondent's work prior to commencement. Staffing needs at Comanche Peak fluctuate and when the Respondent does not have sufficient work demand from Luminant, the Respondent will lay off employees. When it began operations at Comanche Peak, the Respondent hired 99.9% of its core employees from Fluor Daniel. The Respondent also had a contract with Comanche Peak for radiation protection services. Jerry Bales was the site superintendent; Kevin Crabtree was the Respondent's site manager.<sup>5</sup>

30 Jose Mendez and David Smith, both electrician journeyman, were hired on January 30. Like every other employee, each signed an employee agreement with Day & Zimmermann, the Respondent's parent organization.<sup>6</sup> Each agreement stated, in pertinent part:

40 III. I understand and fully agree that my employment with Day & Zimmermann is contingent upon successful completion of my background investigation and any training required. I also understand that my employment is conditional upon client approval of qualifications and staffing needs.

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<sup>4</sup> GC Exh. 9 at 3-8.

<sup>5</sup> Both are admitted supervisors and agents within the meaning of Section 2(11) and 2(13) of the Act.

<sup>6</sup> The Respondent is "an indirect subsidiary of Day & Zimmermann." (R. Exh. 14 at 29.)

IV. The provisions above, together with your Safety Manual/Employee Handbook, constitute the Terms and Conditions for this assignment. Terms are subject to revisions by customer. Your signature below indicates acceptance of this agreement.<sup>7</sup>

5       The Employee Handbook referenced in each employment agreement includes the following Notice and Disclaimer:

10       The policies in this handbook are issued to you to guide the relationship between you and Day & Zimmermann. They are not intended to cover every situation; state and federal law will prevail as necessary. To the extent a collective bargaining agreement provides for different entitlements than those set forth in this handbook, the collective bargaining agreement governs bargaining unit employees. Although you will find these policies valuable in answering most questions, please do not hesitate to ask your direct manager about anything which is not clear.

15                               \*                       \*                       \*

20       YOU ARE AN AT-WILL EMPLOYEE. IN OTHER WORDS, THE COMPANY CAN TERMINATE YOUR EMPLOYMENT AT ANY TIME, WITH OR WITHOUT NOTICE, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT COMPLIANCE WITH SPECIFIC PROCEDURES THAT MAY BE DESCRIBED HEREIN. LIKEWISE, YOU CAN QUIT AT ANY TIME YOU WANT, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE OR COMPLIANCE WITH ANY SPECIFIC PROCEDURE SET FORTH HEREIN. THE POLICIES SET FORTH  
 25       HEREIN CONTAIN NO PROMISES OF ANY KIND. YOU SHOULD NOT TAKE THESE POLICIES TO BE A PROMISE BY THE COMPANY THAT YOUR EMPLOYMENT WILL ONLY BE TERMINATED FOR CAUSE, OR THAT YOU ARE ENTITLED TO PROGRESSIVE DISCIPLINE BEFORE YOUR EMPLOYMENT IS TERMINATED. THE COMPANY CAN, ON ITS OWN, CHANGE OR  
 30       DISCONTINUE ANY POLICY OR CHANGE ANY WORKING CONDITION, WITHOUT HAVING TO CONSULT YOU INDIVIDUALLY OR ITS EMPLOYEES AS A GROUP.

35       THE COMPANY HAS PROVIDED THIS EXPLANATION TO YOU IN ORDER TO MAINTAIN ITS WITH ITS EMPLOYEES.

40       Section One of the Employee Handbook – Introductory Information – states in pertinent part: . . . Due to the nature of its business, employees are the Company’s most valuable asset. All non-staff, craft positions are temporary, varying in length according to contract duration. . . .

45       All employees, including Mendez and Smith, were also required to acknowledge receipt of the Employee Handbook at page 47. That page states, in pertinent part:

I further understand that the contents of the handbook are presented for informational purposes and that nothing contained within is intended to create or constitute an

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<sup>7</sup> R. Exh. 1-2.

employee contract between myself and the Company. I understand that my employment with the Company is on an “at will” basis, which means that either the Company or I may end the employment relationship at any time or without reason or cause.

5 Mendez and Smith also electronically signed acknowledgements that they were “given access to a digital copy of Day & Zimmerman’s Safety Manuel & Employee Handbook.” That form concluded with the following statement:

10 Finally, I understand that nothing contained in the Handbook is intended to create or constitute an employee contract between myself and the Company. I understand that my employment with the Company is on an “at will” basis, which means that either the Company or I may end the employment relationship at any time or without reason or cause. To this end, I understand that the Company expects me to read the Notice and Disclaimer section in the beginning of the Handbook, and ask Human Resources any  
15 questions that I may have about it.<sup>8</sup>

#### *B. The Union’s Path to Recognition*

20 Within days of the Respondent's commencement of maintenance operations, core employees, i.e., employees who worked during online and outage operations, reached out to the Union for representation. Those employees included David Smith and Jose Mendez. On February 25, the Union filed a representation petition with Region 16. The petition included core employees but excluded employees hired specifically for outages.<sup>9</sup> The Respondent objected to the exclusion of outage workers on the grounds that they shared a community of  
25 interests with core employees.

A representation hearing was held on March 5. On March 18, the Regional Director issued a Decision and Direction of Election (DDE) ordering that a mail ballot election be  
30 conducted among the core employees only, defined as follows:

35 Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including JR Decon, SR Decon, JR HP, SR HP, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter  
40 Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers (Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

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<sup>8</sup> R. Exh. 3-5.

<sup>9</sup> R. Exh. 13.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.<sup>10</sup>

5 Pursuant to the DDE, the Respondent provided the Regional Director and Union with a list of the core employees. The list did not include employees classified as lake employees and they were only permitted to vote subject to challenge.<sup>11</sup> The lake employees worked at Squaw Creek Park near Comanche Peak and oversaw park and boating activities. At the time of the vote, three of those employees – Teresa Milton, Bradley Sutter, and James Foos – had already  
10 been laid off. The election was conducted by mail ballot and the Union won the election.

At some point between March 18 and April 20, Bales addressed a group of unit employees at Comanche Peak. His presentation was permeated by a gloomy employment forecast if the Union came in:<sup>12</sup>

15 (Bales) And in my opinion, if this – if this goes union, I don't have that – I don't get that anymore. I don't get to make that decision. Some of you may think that's a good thing, but I have done a lot of things behind the scenes that you all don't know about. I hear all of the business meetings. The business model for this group is not to be union. And in  
20 my opinion, if this group, if this company, [Fluor] or DZ,<sup>13</sup> at this point, DZ, tries to go union, I do not believe anybody in this room will have a job in six months. I don't believe that DZ will be here. DZ executives have already said that this part of DZ that we work for, they have no union jobs, and they will not continue this job if it goes union. That is why I do not – it is my belief, that if we go union, that the client will pick another  
25 contractor to come in here and bring their own people, "do not hire any of these people." That's my opinion.<sup>14</sup>

(NO)<sup>15</sup> If they pull back, then you can hold it, and if the company, if you talk to them afterwards, DZ, after it is pulled back, and if you don't approve, you can put the union  
30 back in quickly, and if it goes back in, I think DZ will lose their contract, and there will be somebody else, that is something that we as employees withhold for DZ. . . . I can remember one thing that one of my teachers told me back in school. We was all seniors getting ready to graduate, and that this is the last time we are going to see each other all at the same time. That is my belief on this, that if this goes union, that this will be the last  
35 time this group is together like it is now. Again, that is my opinion. . . . But, you know, I don't know, again, how it would be if the union comes in here. I can only -- only speculate, but from what I have seen and from what I know from a business standpoint, it is not going to be good. But, again, that is just my opinion.<sup>16</sup>

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<sup>10</sup> GC Exh. 9.

<sup>11</sup> The four lake employees on the voter list did not vote. (GC Exh. 9; LL. 9-10; R Exh. 9-10.)

<sup>12</sup> The audio recording and transcript were initially designated as GC Exh. 12 and GC Exh. 12(a), respectively. They were subsequently redesignated as GC Exh. 12(a) and (b).

<sup>13</sup> DZ refers to Day & Zimmermann.

<sup>14</sup> GC Exh. 12(b) at 4.

<sup>15</sup> "NO" is not identified. However, a reasonable interpretation of the audio and transcript is that the individual spoke as a supervisor or agent who compounded the impact of Bales' remarks. Id. at 5.

<sup>16</sup> Id. at 6-8.

Voting was conducted between April 20, when ballots were mailed out until they were tallied on May 29. A majority of votes were cast in favor of representation and, on June 8, the Union was certified as the exclusive collective-bargaining representative of unit employees. On June 19, the Respondent filed with the Board a request to review the certification on several grounds, including the exclusion of outage workers from the unit.<sup>17</sup>

*C. The Union's Request to Bargain and for Information*

On June 22, notwithstanding the Respondent's challenge to the election, the Union requested in writing that the Respondent recognize it, enter into bargaining, and provide it with the following information in preparation for collective-bargaining:

A list of all employees in each of the classifications included in the bargaining unit who have been employed at the Comanche Peak site within the past two years, including their names, dates of hire, method of hiring, rates of pay, job classification, last known address, phone numbers, and Social Security numbers;

For each employee listed in response to item number 1 above, please list his/her current job description, or job description at the time he/she left employment.

For each employee listed in response to item number 1 above please provide a detailed statement of all forms of compensation provided, whether that be in the form of wage payments, including paid time off or bonus compensation, use of company vehicles, cell phones, laptops, or any other thing of value the Company provides them as consideration for the performance of their duties;

Copies of any company wage or salary plans applicable to any bargaining unit employee.

A copy of any fringe benefit plan that has covered any employee in the classifications of employees in the bargaining unit within the past two years.

A copy of all current company personnel policies or procedures with respect to all aspects of the terms and conditions of employment for any bargaining unit employees, including but not limited to, policies concerning discipline, transfers, work rules, employee evaluations, attendance, company provided tools, leaves, and vacations;

Please describe in detail all current unwritten company personnel policies or procedures with respect to all aspects of the terms and conditions of employment for any bargaining unit employees, including, but not limited to, policies concerning discipline, transfers, work rules, employee evaluations, attendance, company provided tools, leaves, and vacations;

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<sup>17</sup> R. Exh. 14.

A list of all employees in each of the classifications included in the bargaining unit who have been disciplined during the last two years, including the date of the discipline, the nature of the discipline and the reason that the discipline was given.

5 A list of all employees in each of the classifications included in the bargaining unit who have been terminated during the last two years, including the date of termination, the nature of the termination and the reason for termination.

10 Please list all employees in each of the classifications included in the bargaining unit who have engaged in conduct for which the company has considered discipline but has not actually given discipline including the name of the employee, the date of the incident, the nature of the discipline considered, and the reason the discipline was not imposed;

15 Please provide copies of all employee evaluations for each of the classifications included in the bargaining unit given during the past two years.

20 A list of all employees in each of the classifications included in the bargaining unit who have taken leave for any period of time for any purpose within the past two years, describing the nature of the leaves.

For each such employee described in item number 12 above, please provide, along with the employee's name, the date the leave began, the date the leave ended, the reason for the leave, and any compensation provided to that employee while on leave.

25 With respect to any employee in any of the classifications included in the bargaining unit who has been denied any leave for the last two years please give the name of the employee, the date the employee was denied leave, the identity of the supervisor who denied leave, and the reason or reasons that the employee was denied such leave;

30 A list and description of all bonuses, prizes, rewards or other special benefits or gifts provided to any employee in any of the classifications included in the bargaining unit within the past two years if not already described in response to item number 3 above, including but not limited to, any hunting, fishing, or sporting events that the company sponsored or invited employees to either participate in or attend;

35 For each bonus, prize, reward, or other special benefit or gifts described in item number 15 above please give a detailed description of the item, the name of the person(s) to whom it was provided, the date it was provided, the value of the item and the reason it was provided. This request is meant to include, but is not limited to, any hunting, fishing, or sporting events that the company sponsored or invited bargaining unit employees to either participate in or attend.

45 A statement of any unwritten company policy regarding bonuses, prizes, rewards, or other special benefits or gifts.

A list of all employees who have transferred from any other Atlantic Group worksite to the Comanche Peak plant during the past two years with the date of transfer, the worksite

from which the employee was transferred, the reason for such transfer, and the name of the person(s) who made the transfer decision.

5 The attendance record of any bargaining unit employee who has been warned either orally or in writing, suspended, terminated, or otherwise disciplined because of attendance problems.

10 Please identify any bargaining unit employee with whom the company has any oral agreement or written agreement. For each such employee please provide a copy of the agreement if in writing or, if oral, please describe the agreement including all of its essential terms and conditions.

15 Discrimination and harassment information. The Union requested the following information relating to the Respondent's "compliance with current contractual and statutory obligations to provide a workplace free of discrimination and harassment:" hiring, promotion, transfer and demotion lists including race, national origin, sex and sexual preference; related charges, complaints and investigative reports; equal opportunity and affirmative action plans, policies and reports.

20 Workplace safety information. In order to determine the Respondent's policies relating to workers' compensation and workplace safety, the Union requested information relating to workers' compensation coverage information; accident reports; OSHA logs; and power equipment that the Respondent expected bargaining unit employees to use.

25 Customer Relations Information. The Union sought the following information relating to discipline applied to bargaining unit employees as the result of complaints by Luminant: complaints or praise; investigations; policies on how to respond to complaints by Luminant; discipline or rewards applied as the result of Luminant complaints or praise.

30 Promotion information. The Union sought policies relating to promotions, lists of employees and non-employees promoted to positions outside the unit, pay applicable pay rates, and reasons for the promotions, and employees denied promotions.

35 Merit pay practices. The Union sought information relating to the Respondent's merit pay policies and practices.

Training information. The Union sought information relating to the Respondent's training programs and practices.

40 Murphy concluded by requesting a response to his request for bargaining dates within five days and to the information request within 10 days.

#### *D. Union Complains about Employees Exposure to COVID-19*

45 On June 25, Murphy emailed Jansonius expressing concern over the potential exposure of unit employees to COVID-19. As such, he requested the following information, limited to the period between March 1 and June 25, within 10 days:

5 All employees, customers, suppliers or other persons who have been required to leave the Comanche Peak site as a result of a quarantine order or doctor's order; the conditions or situation that led to the affected person's removal; whether testing for the Coronavirus or its antibodies is available onsite to employees, customers, suppliers or other persons who come into contact with bargaining unit employees; If such testing is available, please name each bargaining unit employee who has been tested, the date of the test, the reason for the test, and indicate the type of test and its result.

10 Names of bargaining unit employee sent offsite for testing, the date of the test, the reason for the test, and indicate the type of test and its result.

Any policy related to COVID-19 to which bargaining unit employees are subject.

15 All of the persons who are empowered to direct bargaining unit employees to be tested for coronavirus and/or to remove such employees from the site.

20 Whether employees who are directed to leave the site for suspicion and/or exposure to coronavirus are compensated for their lost time; if so, describe the policy allowing for such payments, and name each person authorized to approve such payments.

Current status of each bargaining unit employee who has been tested for coronavirus and/or its antibodies

25 Copies of any notices given to employees, supervisors, managers, and/or Human Resources concerning employees who have been directed to quarantine due to coronavirus concerns and/or tested for COVID-19.

30 All injury reports concerning possible or confirmed exposure to COVID-19.

All OSHA 300 logs concerning possible or confirmed cases of COVID-19.

*E. The Respondent's Late and Partial Responses to the Union's Information Requests*

35 On June 30, Jansonius emailed Murphy informing him that the Respondent would refuse to recognize, bargain with, or provide information to the Union on the grounds that its challenge to the results of the representation election was pending before the Board.<sup>18</sup> Respondent, in its request for review argued that outage employees—those employees specifically excluded by the Regional Director in the DDE—should be included in the unit. On September 24, the Board  
40 denied the Respondent's request for review of the DDE:

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<sup>18</sup> Jansonius and Murphy did agree to informally resolve two issues, including an unfair labor practice charge, that arose over the next several months concerning the Respondent's attendance policy and the separation of an employee. (GC Exh. 17; Tr. 45, 79-80.) With respect to bargaining, however, the Respondent continued to insist that the parties would not move forward until the Board ruled on its challenge to the election. See *Performance Corp.*, 335 NRB 1117, 1149 (2001) (opening statements may be used as party admissions).

In denying review of the Regional Director's finding that the Employer's outage-crew employees are excluded from the unit as temporary employees lacking a reasonable expectation of reemployment, we rely on *United Telecontrol Electronics, Inc.*, 239 NLRB 1057, 1058 (1978) (temporary employees excluded from the unit, where employer had recurring need for such employees but circumstances did not establish that they had a reasonable expectation of reemployment); *Individual Drinking Cup Co.*, 115 NLRB 947, 949 (1956) (same); *The United Dairy Co.*, 57 NLRB 1350, 1353 (1944) (same).

That same day, Murphy emailed Jansonius asking: "What's the next move? Will the Company now recognize the Union." Shortly thereafter, Jansonius replied that he was "just learning of the RFR decision. I will have to visit with my client and will then get back to you Michael." On September 29, Jansonius informed Murphy that management was meeting later that day to decide on a course of action. Jansonius expected to get "marching orders" after that meeting and said he would contact Murphy. On October 2, Murphy informed Jansonius that the Union agreed to November 13 for the first bargaining session. He added that he would "be looking for your proposed ground rules."

There was no further communication between the parties until October 30, when a conflict caused Murphy to change his request to meet on November 13 to the following week. On November 2, Jansonius replied by proposing that the parties meet initially on November 18 in Fort Worth and start formal bargaining sessions on November 20. On November 3, Jansonius and Murphy agreed to that schedule.<sup>19</sup>

On November 5, the Respondent finally produced some of the information requested by the Union on June 22. Attached to Jansonius' email was a spreadsheet listing job titles, rates of pay, and other information for unit employees, the employee handbook, job descriptions, and all disciplinary warnings issued by the Respondent to unit employees. Jansonius also informed Murphy that he would "send additional material to you as I receive it."

On November 16, Murphy handed Jansonius a list of the information that was still outstanding. Jansonius replied that the outstanding information sought was irrelevant or confidential. When Murphy asked Jansonius to identify the requests he believed were irrelevant or confidential, Jansonius failed to identify the items to which he was referring.

As planned, the parties met on November 18. On November 19, Jansonius provided Murphy with the first and only response to the June 25 information request – Luminant's policies addressing access to the Comanche Peak and related Covid-19 safety concerns. Murphy emailed Jansonius, stating that "this still leaves a lot of questions unanswered." Jansonius never replied.<sup>20</sup>

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<sup>19</sup> The General Counsel contends that the "Jansonius did not get back to Murphy until November and did not begin 'formal negotiations' until November 20." There is no evidence that Jansonius replied to Murphy's September 24 requesting recognition and October 2 email proposing the initial bargaining date. That argument, however, overlooks the fact that Murphy proposed an initial meeting on November 13, then changed it to the following week, which Jansonius accepted a few days later. (R. Exh. 25; Tr. 29, 45-46.)

<sup>20</sup> Murphy's testimony regarding his conversations with Jansonius was credible and undisputed. (Tr. 48-52.)

Formal bargaining commenced on November 20 with the Union tendering several proposals. On November 27, Jansonius emailed Murphy several counter-proposals and noted that it was “unclear to me whether we plan to meet on Friday, December 4. I don’t think that it is in the plans, but let me know if you understand differently.”

On December 22, Schlottman emailed Murphy responses to the June 22 information request. On January 27, 2021, Murphy replied, acknowledging receipt of partial responses to the Union’s information requests and listing the outstanding items: “General Information” 11, 12, 13, and 20; “Discrimination and Harassment” 1-5, and 11; “Workplace Safety Information” 1-8; “Customer Relations Information” 1-4; “Promotions Information” 2-4; “Merit Practices” 1-8; and “Training Requests” 2 and 4. Schlottman never replied. With respect to the June 25 information request, Murphy noted that the Respondent provided no information in response to the Covid-19 and related health safety information at items 1-5, 9, 11 and 12.<sup>21</sup>

#### *F. The Respondent Lays Off Smith and Mendez*

Prior to Union certification on June 8, the Respondent laid off four unit employees – Joe Ortiz, Teresa Milton, Bradley Sutter, and James Foos. Ortiz was an insulator journeyman laid off on May 13 due to a lack of work. The others were laborers laid off on April 6 when Luminant closed its lake facilities due to the COVID-19 pandemic.

Mendez and Smith were core employees who worked when Comanche Peak was on-line actively generating electricity. Sometime in July, Smith and Mendez were working on a project involving air compressors at Comanche Peak. While in progress, Luminant informed the Respondent that the project was being delayed. As a result of Luminant’s postponement of the compressor project, employees on that project no longer had authorized work to perform at Comanche Peak. Management attempted to find other funded projects for employees to work, but it was determined that there was insufficient work for everyone and that a reduction-in-force was necessary. As a result, the Respondent laid-off Smith on July 17 and Mendez on July 20.<sup>22</sup> It did so without providing the Union notice of and an opportunity to bargain over those layoffs.

Following their layoffs in July, Smith and Mendez were offered and accepted work with the Company during the fall outage. Smith resigned after eight days to accept employment elsewhere. Mendez worked throughout the fall until early December.

### LEGAL ANALYSIS

#### I. BALES’ PRE-ELECTION STATEMENTS TO EMPLOYEES

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act when Bales threatened unit employees with job loss, plant closure or loss of subcontract work if they selected the Union as their bargaining representative. The Respondent does not deny that the statements were made. Instead, it contends that the audio recording and accompanying transcript do not

<sup>21</sup> There is no evidence disputing Murphy’s testimony or his January 27, 2021 e-mail memorializing the information that has not been produced regarding the June 25 request. (GC Exh. 4; Tr. 52-55, 64.)

<sup>22</sup> R. Exh. 24 at 000144.

constitute evidence of a captive audience meeting. Specifically, it contends that the recording alone lacks context as to the content and setting. The Respondent further asserts that the statements amounted to lawfully protected speech under Section 8(c) of the Act.

5           Initially, the Respondent's claim that the recording lacks context and setting places it at cross-purposes with its unopposed motion at the hearing to forego witness testimony regarding the circumstances of the recording:

10           MR. JANSONIUS: Okay, no objection, but I do have one matter I would like to address with the audio, and that is, and maybe this is beyond the realm here, but we would prefer that whoever did the recording not be identified.

JUDGE ROSAS: Can you -- can you explain that a little more?

15           MR. JANSONIUS: Yeah, I think it is better for employee relations and for going forward, that whatever employee did this not be identified, so that there we are never in a position of being accused of retaliation or singling out, or anything like that.

20           JUDGE ROSAS: All right, let's go off the record. . . . Back on. All right, so we . . . just had a discussion off the record to try to get an understanding of this, and as . . . it appears that the General Counsel, you are going to be offering an audio recording that is in the form . . . that has been transcribed . . . you have no objection to that; is that correct?

25           MR. JANSONIUS: Correct, Your Honor.

JUDGE ROSAS: All right, you had a motion, at this point?

30           MR. JANSONIUS: Yes, our motion is simply to refrain from identification of the individual who recorded the conversation, and that is for, you know, that person's protection or Respondent's protection.

JUDGE ROSAS: Okay. Charging Party, any position on that?

35           MR. MURPHY: I do not oppose the . . . Respondent's position in this case.

JUDGE ROSAS: General Counsel, what do you think?

40           MR. LAUREL: Well, what I think, Your Honor, is . . . Respondent not only . . . agreeing to the authenticity of the recording, as well?

JUDGE ROSAS: It's authenticity and it's admissibility.

MR. LAUREL: No objection.

45           JUDGE ROSAS: And . . . I think you also mentioned while we were off the record, that you were going to have that individual also testify that the individual heard it. However, my view on that is, . . . I am supposed to evaluate the . . . allegation on the basis of the

evidence that you are going to be providing it, and there is no better evidence than the recording. So . . . this individual would basically be testifying about what they understood really becomes either superfluous or irrelevant, I have got to evaluate this on the basis of . . . objective evidence. . . . Okay, so both General Counsel's 12 and 12(a) are received.

Having moved to preclude testimony regarding the circumstances of the recording of Bales' statements, the Respondent may not rely on the absence of testimony to its advantage. See *New Hampshire v. Maine*, 532 U.S. 742, 748-749 (2001) ("where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position"); *Pace Industries, Inc.*, 320 NLRB 661, 662 (1996), ("a party who has successfully asserted one position in a legal proceeding should not be permitted thereafter to assert a clearly inconsistent position in the same or related proceedings."). Cf. *Temple University Hospital, Inc.*, 370 NLRB No. 106, slip op. at 2-3 (2021) (judicial estoppel was "not available in this or any Board proceeding where application of that doctrine could compel the Board to surrender its jurisdiction.")

Similarly, the argument that the General Counsel was not prevented from calling other witnesses is also misleading since the Respondent's motion to preclude testimony stressed the importance of protecting "employee relations" going forward. In fact, the record is devoid of any information as to whether another witness could have been called. We only know that the Respondent actively thwarted the General Counsel's attempt to call one who allegedly had personal knowledge of the recording, its context and content. The weight of the evidence, therefore, establishes that Bales, along with another supervisor or agent, made the statements, at a meeting that he organized, sometime between March 18 and April 20 at Comanche Peak to unit employees who were about to vote on union representation.

Under Section 8(a)(1), an employer commits an unfair labor practice when it "interfere[s] with, restrain[s], or coerce[s] employees in the exercise of the rights guaranteed" by the Act. It is also well established that "an employer may criticize, disparage, or denigrate a union without running afoul of Section 8(a)(1), provided that its expression of opinion does not threaten employees or otherwise interfere with the Section 7 rights of employees." As the Supreme Court explained in *NLRB v. Gissel Packing Co.*, 395 US 575, 618-19 (1969):

An employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit. . . . [An employer] "may even make a prediction as to the precise effects he believes unionization will have on his company. . . . [however, the] prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization.

Bales' told employees that he "hear[s] all the business meetings." The business model for unit employees "...is not to be union." And if employees go union, he did not believe that "... anybody . . . will have a job in six months." Bales even warned that if the unit employees decided to bring in the Union, "... the client will pick another contractor." His warnings – that

unit employees vote against union representation if they wished to remain employed – were rooted in hearsay – vague “experiences since 1990” and past “conversations with Luminant executives.” These assertions amounted to advocacy, not objective facts of probable consequences beyond the Respondent’s control. Moreover, Bales suggestion that he had nothing  
 5 against the Union, while simultaneously linking unionization with likely job loss, was overtly disingenuous, so much so that a reasonable employee would have felt threatened by the distortion.

Under the circumstances, Bales’ statements, coming within a month of the representation  
 10 election reasonably tended to restrain, coerce, or interfere with a variety of unit employees’ rights guaranteed under Section 7 in violation of Section 8(a)(1) of the Act. See *Overnight Transportation Co.*, 296 NLRB 669, 670 (1989) (employer may not equate unionization with dire consequences without reference to collective bargaining or the give-and-take of the bargaining process); cf. *Tri-Cast, Inc.*, 274 NLRB 377 (1985) (statements by  
 15 employers to employees indicating a change in a relationship if employees opt for union representation are permissible if unaccompanied by threats).

## II. THE RESPONDENT’S REFUSAL TO RECOGNIZE AND BARGAIN WITH THE UNION

20 The Respondent does not dispute that it refused to recognize and bargain with the Union after it was certified on June 8 as the bargaining representative of unit employees. It argues, correctly, that it was lawfully entitled to contest the results of the election provided that it eventually prevailed. See *NP Palace, LLC*, 368 NLRB No. 148, slip op. at (2019) (“a certification-testing employer preserves both its right to secure judicial review of the underlying  
 25 representation case and, if the union’s certification is upheld by a court of appeals, to engage in accommodative bargaining with respect to information as to which it has raised a legitimate defense, such as confidentiality, that would normally require such bargaining”).

The Respondent did not prevail, however, as the Board denied its request to review the  
 30 DDE on September 24. Nor has the Respondent raised any legitimate defenses enabling it to ignore the Union’s requests for recognition between June 22 and October 2. Accordingly, the Respondent was not relieved of its bargaining obligation. See *Audio Visual Services Grp.*, 365 NLRB No. 84, slip op. at 2 (2017) (employer not relieved of obligation to bargain with certified representative of its employees pending a request for review before the Board), citing *Benchmark  
 35 Industries*, 262 NLRB 247, 248 (1982), enfd. mem. 724 F.2d 974 (5th Cir. 1984). Therefore, having refused to meet its obligation to recognize and bargain with the Union for nearly four months after the Union was certified as the unit employees’ collective-bargaining representative, the Respondent acted at its peril. *Allstate Insurance Co.*, 234 NLRB 193, 193 (1978); *Volkswagen Group of America, Inc.*, 364 NLRB No. 110, slip op. at 2 fn. 4 (2016); *Madison  
 40 Detective Bureau, Inc.*, 250 NLRB 398, 399 (1980). The end result was a violation of Section 8(a)(5) and (1).

## III. THE FAILURE TO TIMELY PROVIDE INFORMATION

45 The General Counsel alleges that the Respondent further violated Section 8(a)(5) by failing to provide the Union with information that it requested on June 22 and 25. The Respondent contends that it provided the Union with voluminous amounts of relevant

information and informed the Union of information that it does not possess. Additionally, it claims that “much of the requested information is not presumptively relevant, and the General Counsel and the Union have failed to prove why that information is necessary for the Union’s representation of the unit employees.” Finally, the Respondent contends that the General  
 5 Counsel and Union failed to identify any information that has not been provided.

The duty to bargain includes “a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees’ bargaining representative.” *Detroit Edison*, 440 US 301, 303 (1979). Information that is intrinsic to the employer-union  
 10 relationship, such as that pertaining to wages and other financial benefits, is considered presumptively relevant. *United Parcel Serv., Inc. & Int’l Bhd. of Teamsters, Loc. Union 373*, 362 NLRB 160, 162 (2015). “[W]here the information requested by the union is not presumptively relevant to the union’s performance as bargaining representative, the burden is on the union to demonstrate the relevance.” *Disneyland Park & Disney’s California Adventure, Divisions of  
 15 Walt Disney World Co.*, 350 NLRB 1256, 1257 (2007).

Here, most of the information sought by the Union’s June 22 and 25 requests pertained to terms and conditions of employment and were presumptively relevant – wages and benefits, work shifts, work rules, training, anti-discrimination and equal employment opportunity records  
 20 and policies, and employee health and safety, including Covid-19 related information. See *United Parcel*, 362 NLRB at 162 (information is presumptively relevant if related to unit employees’ terms and conditions of employment). With respect to non-unit information sought, such information was still relevant and necessary for the Union to formulate wage and other proposals for bargaining. *Caldwell Manufacturing Company*, 346 NLRB 1159, 1160 (2006)  
 25 (employer obliged to provide financial information on which it had based bargaining proposals).

On November 5, four and one-half months after the Union’s June 22 request, the Respondent provided the Union with a partial response containing an Excel spreadsheet listing job titles, rates of pay, and other information for all unit employees, the employee handbook, job  
 30 descriptions for bargaining unit positions, and all disciplinary warnings issued by the Respondent to unit employees. Jansonius also informed Murphy that he would “send additional material to you as I receive it.”

Simply stated, the Respondent’s November 5 response to the Union’s information requests was extremely late; it made no mention at that point of omitted information that it claimed to be irrelevant. It was not until November 16 that Jansonius first mentioned that some of the outstanding information, without identifying which, was irrelevant or confidential. By then, that ship had sailed. Having failed to timely object to any of the June requests, the Respondent waived its right to do so on November 16.  
 40

As previously noted, the defense that the Respondent cannot be penalized for refusing to produce information while it challenged the Union’s certification is unavailing; the Board upheld the Union’s certification and the net result was a four and one half month delay in providing the Union with information reasonably necessary for it to fulfill its obligations as the  
 45 unit employees’ bargaining representative. The Respondent gambled, lost, and violated Section 8(a)(5) and (1) in the process.

## IV. THE LAYOFFS

That Company does not dispute that it laid off Smith and Mendez without notifying the Union and offering it an opportunity to bargain over the layoffs. It contends, however, that their layoffs due to lack of funded work from Luminant was consistent with the terms and conditions of their employment that existed prior to the Union's initial certification on June 8.

That Respondent may have had a business justification for laying off Smith and Mendez did not relieve the Respondent of its statutory obligation to bargain with the Union about that matter. *Granite City Steel Company*, 167 NLRB 310 (1967). Layoffs are a mandatory subject of bargaining. *Thesis Painting, Inc.*, 365 NLRB No. 142, slip op. at 1 (2017); *Eugene Iovine, Inc.*, 353 NLRB 400 (2008), reaffirmed 356 NLRB 1056 (2011), affd. 371 Fed. Appx. 167 (2nd Cir. 2010), vacated on other grounds 562 U.S. 956 (2010); *Tri-Tech Services, Inc.*, 340 NLRB 894, 894 (2003).

Even though the Respondent had a past practice of laying off employees, as it did on April 6 and May 13 due to the lack of work, the formal arrival of the Union on June 8 erased its unilateral discretion with respect to layoffs. Similarly, it is irrelevant post-certification that Smith and Mendez were at-will employees since the arrival of the Union reshaped the employee-employer relationship. Accordingly, the Respondent had an obligation after June 8 to bargain with the Union over the layoff of any unit employees. *Eugene Iovine, Inc.*, above; *Adair Standish Corp.*, 292 NLRB 890, 890, fn. 1 (1989), enf'd. in relevant part 912 F.3d 854 (6th Cir. 1990); see also *Falcon Wheel Div., L.L.C.*, 338 NLRB 576, 576-577 (2002).

Under the circumstances, the Respondent's layoff of Smith on July 17 and Mendez on July 20 without notifying the Union and offering it an opportunity to bargain over such conduct and the effects of such conduct violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union, since June 8, 2020, has been the exclusive collective bargaining representative of the Respondent's employees in the following unit:

Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including JR Decon, SR Decon, JR HP, SR HP, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers

(Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.

4. By threatening employees, on a date between March 18 and April 20, 2020, with job loss if they selected the Union as their bargaining representative, the Respondent violated Section 8(a)(1) of the Act.

5. The Respondent violated Section 8(a)(5) and (1) of the Act in the following respects:

(a) Between June 8, 2020 and October 2, 2020, the Respondent failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(b) The Respondent refused to provide and/or timely provide the Union with information it requested on June 22 and 25, 2020.

(c) The Respondent laid off employees David Smith and Jose Mendez on July 17 and 20, 2020, respectively, without prior notice to the Union and without affording the Union an opportunity to bargain regarding this conduct and the effects of this conduct.

6. The foregoing unfair labor practices affected commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Regarding its unlawful refusal to bargain in good faith with the Union, I shall order the Respondent to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. To ensure that unit employees are accorded the services of their selected bargaining agent for the period provided by law, I shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

Regarding its unlawful layoffs of David Smith and Jose Mendez without notifying the Union and affording it an opportunity to bargain over the layoffs and the effects of those layoffs, I shall order the Respondent to offer them full reinstatement to their former jobs or, if the jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any

other rights or privileges previously enjoyed. I also shall order that the Respondent make Smith and Mendez whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the unlawful discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with the decision in *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), I shall also order the Respondent to compensate Smith and Mendez for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. I shall order the Respondent to compensate Smith and Mendez for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and to file with the Regional Director for Region 16 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition, I shall order the Respondent to file with the Regional Director for Region 16 a copy of Smith's and Mendez's corresponding W-2 forms reflecting the backpay awards.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>23</sup>

#### ORDER

The Respondent, The Atlantic Group, Inc., Glen Rose, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with job loss if they support the Union to be their bargaining representative.

(b) Failing and refusing to recognize and bargain with the International Brotherhood of Electrical Workers, Local Union 220 (the Union) as the exclusive collective-bargaining representative of a certain unit of core employees at the Comanche Peak nuclear power plant.

(c) Failing to provide and timely provide information requested by the Union which is necessary and relevant to its obligation as the bargaining representative of unit employees.

(d) Laying off unit employees without prior notice to the Union and affording the Union an opportunity to bargain regarding this conduct and the effects of this conduct.

(e) In any like or related manner interfering with, restraining, or coercing employees in

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<sup>23</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including JR Decon, SR Decon, JR HP, SR HP, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers (Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.

(b) Within 10 days, provide the Union with the outstanding information requested on June 22 and 25, 2020.

(c) Within 14 days of this Order, offer David Smith and Jose Mendez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make David Smith and Jose Mendez whole for any loss of earnings and other benefits suffered as a result of the unlawful discharge by the Respondent.

(e) Compensate David Smith and Jose Mendez for their search-for-work and interim employment expenses in the manner set forth in remedy section of this decision.

(f) Compensate David Smith and Jose Mendez for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

(g) File with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(h) File with the Regional Direct for Region 16 a copy of corresponding W-2 forms reflecting the backpay awards to David Smith and Jose Mendez.

(i) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoffs of David Smith and Jose Mendez, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(j) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its facility in Glen Rose, Texas, copies of the attached notice marked "Appendix."<sup>24</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 18, 2020.

(l) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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<sup>24</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. April 20, 2021



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Michael A. Rosas  
Administrative Law Judge

## APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with job loss if you support a labor organization to serve as your collective-bargaining representative.

WE WILL NOT fail and refuse to recognize and bargain with the International Brotherhood of Electrical Workers, Local Union 220 (the Union) as the exclusive collective-bargaining representative of our core employees in the bargaining unit.

WE WILL NOT layoff bargaining unit employees without prior notice to the Union and affording it an opportunity to bargain over such conduct and the effects of that conduct.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our core employees in the following bargaining unit:

Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including JR Decon, SR Decon, JR HP, SR HP, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers (Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.

WE WILL, within 10 days from the date of this Order, provide all of the information requested by the Union on June 22 and 25, 2020.

WE WILL, within 14 days from the date of this Order, offer David Smith and Jose Mendez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make David Smith and Jose Mendez whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL compensate David Smith and Jose Mendez for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoffs of David Smith and Jose Mendez, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the layoffs will not be used against them in any way.

\_\_\_\_\_  
THE ATLANTIC GROUP, INC

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov)

819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6178

(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/16-CA-260413](http://www.nlr.gov/case/16-CA-260413) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE  
DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY  
OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE  
WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S  
COMPLIANCE OFFICER (682) 703-7489.